



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201024071

MAR 25 2010

Uniform Issue List: 9100.00-00

SE:P:EP:RA:T3

Legend:

Taxpayer A:

Tax Advisor K:

Date 1:

Date 2:

Date 3:

IRA X:

IRA Y:

Roth IRA Z:

Amount M:

Dear :

This is in response to letters dated December 17, 2008, June 11, 2009, September 28, 2009, December 11, 2009, and December 28, 2009, in which your authorized representative, on your behalf, requests relief under section 301.9100-3 of the Procedure and Administration Regulations (the "regulations"). Following conversion of your traditional individual retirement accounts to your Roth IRA, you request a ruling to allow the recharacterization of your Roth IRA as a traditional IRA after the expiration of the election period under Code section 408A(6) and section 1.408A-5 of the Federal Income Tax Regulations (the "Regulations").

You submitted the following facts and representations in connection with your request.

Taxpayer A, age 60, is sole proprietor of a consulting and repair business which generated a net operating loss in year 2006 resulting in negative adjusted gross income for said year 2006. Taxpayer A's business continued to struggle during year 2007 and his modified adjusted gross income for year 2007 was less than \$100,000. Taxpayer A separated from his wife in calendar year 20 and, as a result, lived separate and apart from her for all of calendar year 20.

Taxpayer A maintained individual retirement accounts (IRAs), IRA X, and IRA Y. On Date 1, 2007, Taxpayer A sent an e-mail to Tax Advisor K inquiring whether Taxpayer A should convert IRA X and IRA Y to a new Roth IRA account. Tax Advisor K responded on Date 2, 2007, by advising Taxpayer A that he could make the conversion of his IRAs to a Roth IRA without incurring excise taxes or penalties. Specifically, Tax Advisor K noted in his Date 2, 2007, response that since Taxpayer A was not generating business operating profits and that he and his wife had been separated for the entire year of 20 , a conversion of the traditional IRAs would be permitted under the Code and Regulations.

On Date 3, 2007, Taxpayer A caused the holder of IRAs X and Y to convert, by means of trustee-to-trustee transfers, his entire interest in IRAs X and Y to Roth IRA Z. On the conversion date the value of Taxpayer A's IRAs was Amount M, approximately double the value of the Roth IRA at the end of year 2008.

During year 2008, Taxpayer A requested that Tax Advisor K file an automatic extension of the due date for filing his year 2007 Federal income tax return. Taxpayer A did not provide tax information or communicate his tax plans with Tax Advisor K until late in year 2008 which was after the expiration of the period of automatic extension of the due date for filing his year 2007 Federal income tax return. Tax Advisor K, upon learning that the Date 3 conversion had occurred, informed Taxpayer A that Taxpayer A missed the October 15, 2008 deadline for any recharacterization of Roth IRA Z to a traditional IRA.

Based on your submission and the above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the regulations, Taxpayer A be granted a period not to exceed 90 days from the date of this letter ruling to recharacterize Roth IRA Z as a traditional IRA.

With respect to your ruling request, Code section 408A(d)(6) and section 1.408A-5 of the Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having originally been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) and section 1.408A-5, this recharacterization election generally must occur on or

before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax returns for the year of contributions.

Section 1.408A-5, Question & Answer-6 of the Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Code section 408A(c)(3)(B) provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year, or an individual that is married and files a separate return is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2, of the Regulations provides that an individual with modified adjusted gross income in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2 further provides that an individual and his spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income (AGI) subject to the \$100,000 limit for a taxable year is the modified AGI derived from the joint return using the couple's combined income.

Section 408(A)(c)(3)(D), as applicable to calendar year 2007, referred to section 219(g)(4) and provided that a married individual who files a separate return and who lives apart from his spouse for the entire taxable year shall not be treated as a married individual for purposes of section 408A(c)(3).

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not

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referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer A's ruling request requires the Internal Revenue Service to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the Regulations.

Taxpayer A represents that he was unaware of the deadline for recharacterizing Roth IRA Z because Tax Advisor K did not mention the section 408A(d)(6) and section 1.408A-5 recharacterization deadline in his initial Date 2, 2007, response to Taxpayer A's inquiry about converting his IRAs to a Roth IRA. Taxpayer A also asserts that complicated divorce proceedings during year 20 contributed to his failure to file his Federal income tax return timely and to communicate with Tax Advisor K about his tax return preparation. Tax Advisor K has represented that had there been such communication in a timely manner, Tax Advisor K would have discussed the recharacterization election deadline before the due date for filing Taxpayer A's year 2007 Federal income tax return including any extension.

Based upon the representations made, the Service notes that Taxpayer A was eligible to convert his IRAs to a Roth IRA and that Taxpayer A received correct advice from Tax Advisor K concerning the conversion. The correct advice

provided by Tax Advisor K included Taxpayer A's eligibility to convert IRAs X and Y based upon Taxpayer A having an adjusted gross income of below \$100,000 and Taxpayer A's marital status for the tax year (2007) in question.

The Service further notes that an election to recharacterize Roth IRA Z was not required to avoid tax penalties or liabilities because there is no evidence of an error in the conversion of IRAs X and Y to Roth IRA Z. Consequently the Service concludes that since there was no evidence of taxpayer error in the original conversion, there was no necessity for a timely election to recharacterize and, as a result, there was no failure to make a timely election which could be discovered by the Service. A discovery by the Service, within the meaning of section 301-9100-3(b)(1)(i) of the regulations, necessarily requires some element of taxpayer error in the conversion.

Additionally, under the set of circumstances described above Taxpayer A has not presented to the Service a set of facts that comes within any of the five clauses of section 301-9100-3(b)(1) of the regulations.

Accordingly, we rule that Taxpayer A is not granted, under section 301.9100-3 of the Regulations, an additional period beyond the expiration of the election period described in Code section 408A(d)(6) and section 1.408A-5 of the Regulations to recharacterize Roth IRA Z as a traditional IRA.

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

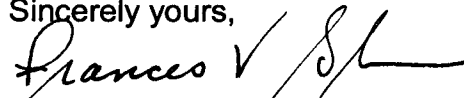
A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact.

correspondence to SE:T:EP:RA:T3.

Please address all

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose